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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

BORIS K'ZORIN,

Plaintiff and Appellant,

v.

CALIFORNIA UNEMPLOYMENT
INSURANCE APPEALS BOARD,

Defendant and Respondent.

B240269

(Los Angeles County
Super. Ct. No. BS 125990)

APPEAL from a judgment of the Superior Court for the County of Los Angeles.
Ann I. Jones, Judge. Affirmed.

Boris K'Zorin, in pro. per., for Plaintiff and Appellant.

Kamala D. Harris, Attorney General, Julie Weng-Gutierrez, Assistant Attorney
General, Leslie P. McElroy and Phillip Juntai Matsumoto, Deputy Attorneys General, for
Defendant and Respondent.

SUMMARY

The Employment Development Department (department) denied unemployment insurance benefits to a claimant on the ground she was not “able to work and available for work” as required by Unemployment Insurance Code section 1253, subdivision (c). Claimant’s appeals to an administrative law judge (ALJ) and then to the California Unemployment Insurance Appeals Board (Board) were denied on the same ground, and the trial court denied a petition for a writ of mandate (Code Civ. Proc., § 1094.5) seeking to set aside the Board’s decision. We affirm the judgment.

FACTS

The claimant in this case was Ala Korachkina Zoryna. After her death, her husband, Boris K’Zorin (plaintiff), continued claimant’s appeals of decisions denying claimant unemployment insurance benefits.

Claimant’s last date of employment was February 13, 2009. She had been diagnosed in May 2008 with breast cancer, and was hospitalized from February 23 to February 27, 2009, and again from March 13 to March 23, 2009. She applied for unemployment benefits.

On April 14, 2009, the department denied her claim. The notice of determination had two findings, but only one of them is at issue in this case.¹ The department found claimant was not eligible to receive benefits beginning March 15, 2009, because she “cannot work for health reasons,” and an unemployed person is not eligible for benefits unless he or she is “able to work and available for work” (Unemp. Ins. Code, § 1253, subd. (c).) (The record of an interview on April 13, 2009, indicated claimant said

¹ The department also found claimant was ineligible for the period beginning February 8, 2009, because she had quit her job with Dr. Michael V. Zelman due to health concerns and “had no medical advice to quit.” (See Unemp. Ins. Code, § 1256 [leaving work voluntarily without good cause].) This determination was reversed by the ALJ, who found claimant “had good cause for voluntarily leaving work since her health condition does not permit her to continue employment” and it “appears unlikely that the claimant will be able to resume working in the near future.” Consequently, the ALJ found benefits were payable “provided the claimant is otherwise eligible.”

she was “now recuperating, but is not able to work.” The interviewer advised claimant of state disability insurance, but she did not want to pursue disability benefits, preferring to take unemployment benefits and go to school.)

Claimant appealed, saying she “had medical [advice] to quit” and now felt “ready for a p/t job as it was reported in my initial application.” Since her discharge from the hospital in March, she was “able and available for work,” and planned to attend school to improve her English language skills. Her former employer, Dr. Zelman, confirmed claimant “was not laid off or fired,” and he did not object to his reserve account being charged for any benefits.

The ALJ held a hearing. Claimant appeared by written declaration dated June 17, 2009. Her declaration confirmed she was suffering from metastatic breast cancer and “just fighting for a life.” She stated she wanted to and would work; “I cannot start right now being under treatment, but I got permission of the doctor to be enrolled in the community college”; and “attendance of the permitted educational institution means availability to work.” Claimant referred to her “inability to be at scheduled hearing” and stated her “health conditions are a good cause for our nonappearance”

Dr. Zelman appeared telephonically. He testified that claimant no longer worked for him because of her illness; “she left just because she became more ill.” Dr. Zelman said that on the 8th or 9th of February 2009, he had advised her husband to take her to the hospital because her right arm was swollen. He did not know the current stage of claimant’s illness, but indicated it was metastatic breast cancer; he said he did not know whether she would be able to work, as he had not seen her since mid-February.

The ALJ found claimant was not able to work and was ineligible for benefits for that reason. The ALJ found the evidence “suggests the claimant is not physically able to work at this time”; claimant left work because “she was extremely ill and battling metastatic breast cancer”; claimant “did not attend the hearing nor did she submit any information to suggest she is now better”; and “claimant is a more suitable candidate for state disability insurance benefits rather than unemployment insurance benefits since all evidence suggests that the claimant is currently not able to work due to her illness.”

Claimant appealed to the Board on August 1, 2009. She contended that her doctors allowed her to attend school, so she was “able to work and available for work,” and was “about to finish summer session” and would continue in the fall session on August 31. On August 22, claimant requested a transcript of the hearing before the ALJ.

Claimant died on September 10, 2009, and plaintiff continued her appeal.

The Board provided plaintiff with requested materials on September 18, and plaintiff submitted written argument on September 28, 2009. Much of the argument was not relevant to the question whether claimant had been “able to work and available for work.” (Unemp. Ins. Code, § 1253, subd. (c).) Plaintiff’s argument cited “new evidence,” arguing claimant was able to work; at the time of the initial interview she was still recovering, “but then she became getting well, found power to concentrate on studying,” and completed the summer session at a community college; her doctors approved her college attendance; she did not use a wheelchair but “just regular ambulatory attendance” at her scheduled procedures. After the deadline for written argument, plaintiff submitted a clarification of his earlier argument, asserting claimant was available for work on the day of the initial interview; “was not able to do only intensive office work”; and the ALJ “failed . . . to verify her physical abilities for a work” as the ALJ “did not call the claimant’s real (attendance) physician.”

The Board independently reviewed the record, found no material errors in the ALJ’s findings of fact, found “[t]he reasons for decision properly apply the law to the facts,” and affirmed the decision denying unemployment insurance benefits. The Board did not consider the additional evidence plaintiff submitted, stating that it was “intended to respond to information contained in the administrative law judge’s decision,” and it would violate due process to consider it because “neither the opposing party nor the administrative law judge was able to question [the claimant] about the new evidence.”²

² A second appeal was filed from a later request for benefits that the department denied on July 21, 2009. The department had called to interview claimant on July 17, 2009, but there was no answer; the department concluded it did not have sufficient information to find claimant available for work. Claimant’s appeal stated she was

Plaintiff, proceeding in propria persona, sought a writ of mandate commanding defendant to pay unemployment insurance benefits from March 15, 2009, and for damages for pain and suffering and intentional infliction of emotional distress by department officials. Plaintiff and Dr. Zelman stipulated that Dr. Zelman told the Board that claimant “left her employment due to an illness and was not laid off or fired,” and that Dr. Zelman “does not object to his reserve account being charged for unemployment benefits to [claimant] [from] February 13, 2009 through the date of her passing” if the court found plaintiff’s petition should be granted.

The trial court denied plaintiff’s petition, finding the weight of the evidence supported the Board’s determination that claimant was ineligible for unemployment insurance benefits “because she was not able to work due to her declining health.” The court found “nothing in the record before the Board to suggest that claimant regained her health or was otherwise physically capable of working during the relevant period. Activities that are intermittent or unrelated to the demands and rigors of employment do not support a conclusion the [claimant] had the physical stamina to be able to and be ready to work.”

Judgment was entered and this appeal followed.

DISCUSSION

After a Board determination of ineligibility for unemployment benefits, the trial court conducts an independent judicial review of the evidence. (*Interstate Brands v. Unemployment Insurance Appeals Board* (1980) 26 Cal.3d 770, 776.) On appellate

available to work, she was a student, and she was already scheduled for a medical appointment on the day set for the telephonic interview and had requested a new appointment time. Plaintiff submitted photos and claimant’s school transcript, and appeared by written statement. The ALJ dismissed the appeal as moot because claimant had already been disqualified under Unemployment Insurance Code section 1253, subdivision (c). The Board affirmed the ALJ’s decision, observing that claimant had been found ineligible for benefits for an indefinite period due to her medical condition, and eligibility “based on school attendance cannot affect the claimant’s entitlement to benefits at this time.”

review of the trial court’s ruling on a writ of mandate, our inquiry is ordinarily limited to whether the findings and judgment of the trial court are supported by substantial, credible and competent evidence. (*Sanchez v. Unemployment Insurance Appeals Board* (1984) 36 Cal.3d 575, 585.)

The Unemployment Insurance Code states that an unemployed individual “is eligible to receive unemployment compensation benefits with respect to any week only if the director finds that: [¶] . . . [¶] . . . He or she was able to work and available for work for that week.” (§ 1253, subd. (c).)

Plaintiff’s contentions in this case are, as the trial court observed below, somewhat difficult to follow. The substance of plaintiff’s argument is that the decision is unjust and unfair because claimant wanted to work, could not afford to withdraw from the job market, and was attending school to improve her English language skills. But as the Board stated in claimant’s second appeal (see fn. 2, *ante*), while claimant had suffered significant hardship, “eligibility for benefits is not based on need but rather upon specific requirements set forth in the law.” Thus, the only relevant issue at all stages of this litigation was whether claimant was “able to work and available for work” (Unemp. Ins. Code, § 1253, subd. (c).)

Here, the trial court conducted an independent review of the record, and concluded that the weight of the evidence supported the Board’s determination that claimant was ineligible for benefits because she was not able to work due to her declining health. The court specifically addressed plaintiff’s apparent belief that claimant’s school attendance meant she was entitled to unemployment benefits: “That the claimant was able to attend a community college class to improve her English during this period is not substantial evidence that the claimant was able to work and available to work.” As previously noted, our review of the trial court’s decision is limited. We have reviewed the record, described above, and find no basis for reversing the trial court’s findings and judgment, as they are plainly supported by substantial evidence.

DISPOSITION

The judgment is affirmed. No costs are awarded.

GRIMES, J.

We concur:

RUBIN, Acting P. J.

FLIER, J.